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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE B-201873

DATE: August 17, 1981

MATTER OF: Chemray Coatings Corporation

**DIGEST:**

Specific identification in bid of qualified product differing from qualified product specified in solicitation renders bid nonresponsive.

Chemray Coatings Corporation (Chemray) protests the award of contracts to other firms under invitations for bid (IFB) Nos. 10PR-XBS-6892 (6892) and 10PR-XMD-5118 (5118).

Both IFB's were issued by the General Services Administration (GSA) in late 1980, for, among other things, Forest Green camouflage paint. Enterprise Chemical Coatings Company (Enterprise) and Everseal Manufacturing Company (Everseal) were the low bidders for the Forest Green paint. Chemray protests that the Enterprise and Everseal bids were nonresponsive.

The protest is sustained.

Both solicitations specified Forest Green paint manufactured in accordance with "Military Specification MIL-E-52798A(ME) dated May 21, 1976, and Amendment 2 dated March 3, 1980. Type I - Standard Formulation, QPL [Qualified Products List] qualification required." Bidders were required to "insert in the space(s) provided in the schedule of items, the name of the qualified source (i.e., the manufacturer), the product designation and the QPL test or qualification reference number of each product offered."

The specification designated the pigmentation chemical composition of the Forest Green paint. Chemray, Enterprise and Everseal had products on the applicable QPL (52798A-4, July 9, 1979), with individual test numbers and manufacturer's designations. Amendment 1 to the specification, dated October 22, 1979, added a percentage of zinc phosphate to the pigmentation composition. However, no requalification was required at this time.

*[Protest Alleging that Low Bids Were Nonresponsive]*  
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Amendment 2, dated March 3, 1980, superseded amendment 1, but expressly retained the prior amendment's zinc phosphate requirement. The previous paint formulation was designated as Type I and a new lead-free formula Forest Green paint was created and designated as Type II. By letter of March 14, 1980, manufacturers listed on the then existing QPL were notified that the QPL would be revised and requalification of Forest Green, Type I, paint would be required. Both Enterprise and Everseal received conditional qualification and a new QPL number (52798-5), new manufacturer's designations, and test numbers for Forest Green, Type I, paint on July 2, 1980. The new QPL was not formally issued until February 23, 1981.

The bids of Enterprise and Everseal identified the paint being offered by the prior QPL test numbers. In addition, Enterprise inserted the prior manufacturer's designation number, and Everseal listed the manufacturer's designation as "Securigard," without a number. Enterprise and Everseal notified the contracting officer after bid opening that the bids were intended to be on the amendment 2, Forest Green, Type I, formulation, and the listing of prior QPL test numbers was inadvertent.

Chemray contends that the insertion of the prior QPL information rendered the bids of Enterprise and Everseal nonresponsive since those bidders were bound to deliver only the prior formulation paint and not the Forest Green, Type I, paint of amendment 2 to the specification.

GSA argues that when bidders bid as manufacturers and omit QPL information, but have properly qualified products which can be ascertained from the use of conjunctive information, failure to properly identify the product or QPL list number does not render bids nonresponsive. In these circumstances, GSA argues that improper identification is waivable as a minor informality and is not an indication that a nonqualifying product will be supplied. See 45 Comp. Gen. 397 (1966); D. Moody & Company, Inc., Astronautics Corporation of America, 55 Comp. Gen. 1, 14 (1975), 75-2 CPD 1. The agency concludes that Everseal and Enterprise are obligated to furnish qualified paint conforming to the amended specification.

In the above decisions, bids of manufacturers, which had omitted product or QPL identification, were found responsive because other information in the bids, and elsewhere, enabled the agency to determine the qualified product intended. Here, rather than omitting essential QPL information, Enterprise and Everseal expressly designated the products offered by QPL test numbers and manufacturer identification. In neither bid is there any information which would permit the agency to determine that the bidders did not intend to offer the designated products.

The record indicates that the products listed in the bids are materially different than the product called for by the solicitations. In this regard, neither the agency nor the awardees argue otherwise. In fact, Everseal states: "If we supplied the material under our [prior] QPL #TB-34 52978-4 List it would have been rejected." Further, the cognizant technical activity required requalification after amendment 2 was issued. Since Enterprise and Everseal, albeit inadvertently, have offered a different product than that called for by the specification, the bids are nonresponsive. Nonresponsiveness may not be cured after bid opening. See W. S. Jenks & Son, B-195861, November 25, 1979, 79-2 CPD 373.

Notwithstanding our conclusion, it appears that the solicitations may have misled Everseal and Enterprise into submitting nonresponsive bids. Both solicitations provided, in pertinent part:

"With respect to products described in this solicitation as requiring qualification, awards will be made only for such products as have prior to the time set for receipt of offers been tested and approved for inclusion in the Qualified Products List (QPL) identified below.  
\* \* \*

Solicitation 5118 provided as follows:

<u>Item No.</u>	<u>Qualified Products List</u>
All	MIL-E-52798A(ME)

This part of solicitation 6892 was blank. The only QPL for the unamended MIL-E-52798A(ME) in existence at the time of bid submission and for several months after bid opening was the prior QPL to which Enterprise and Ever-seal referred in the bids.

Also, GSA states that to adopt Chemray's view would eliminate all other bidders from competition, leaving the Government with significantly higher prices to consider. This indicates that the agency considered the bid of Chemray to be unreasonably high.

Under these circumstances, we may have recommended that both solicitations be canceled and the procurements resolicited. However, since the contracts have been performed, or substantially performed, no useful purpose would be served by recommending corrective action.

Protest sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States